

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

August 16, 2006

N440
Waverly White
SBI No.
Delaware Correctional Center
1181 Paddock Road
Smyrna, DE 19977

RE: Defendant ID No. 0110013949

Dear Mr. White:

In April 2002, following a jury trial, you were convicted of robbery in the 1st degree and two misdemeanor charges. On direct appeal, your conviction was affirmed by the Delaware Supreme Court. White v. State, 816 A.2d 776 (Del. 2003).

Thereafter, you filed your first Motion for Postconviction Relief which was denied, and subsequently affirmed on appeal. White v. State, 2004 Del. LEXIS 336, at *5 (Del. Supr.).

Thereafter, you filed a second Motion for Postconviction Relief which was denied on November 15, 2004.

Thereafter, you filed your third Motion for Postconviction Relief which was denied on January 12, 2005 as being procedurally barred.

On August 8, 2006, you filed your fourth Motion for Postconviction Relief. In same, you argue that it should not be procedurally barred because the State should have been collaterally estopped from indicting you following a dismissal of the robbery charge at your preliminary hearing in the Court of Common Pleas.

This claim is likewise procedurally barred. More than three years have expired since the Supreme Court affirmed your conviction. Therefore, it comes too late pursuant to Superior Court Criminal Rule 61(i)(1). Additionally, it is a repetitive Motion and is barred pursuant to Superior Court Criminal Rule 61(i)(2).

Finally, it is barred because you have not addressed the bar of procedural default under Superior Court Criminal Rule 61(i)(3). You have given no cause as to why this matter was not raised earlier.

Your attempt to seek relief from these bars by packaging the claim as a “colorable claim that there was a fundamental miscarriage of justice because of a constitutional violation that undermined the fundamental legality . . . of the proceedings leading to your conviction” also fails.

Following a dismissal of felony charges at your preliminary hearing, the State is entitled to seek an indictment. See Superior Court Criminal Rule 5.1(b). In your case, the State instituted a subsequent prosecution for the same offense by seeking a Grand Jury indictment. Your collateral estoppel argument fails.

Defendant's fourth Motion for Postconviction Relief is denied.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary
Department of Justice